

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In re:

LLS AMERICA, LLC,

Debtor.

NO: CV-12-340-RMP

Bankruptcy No: 09-06194-PCW11

Adversary No: 11-80161-PCW11

BRUCE P. KRIEGMAN, solely in his
capacity as court-appointed Chapter 11
Trustee for LLS America LLC,

Plaintiff,

vs.

Anthony Cilwa, et al.

Defendants.

ORDER DENYING ALL PENDING
MOTIONS

Before the Court are Defendants Anthony Cilwa's and Victoria Cilwa's
(collectively "the Cilwas") motion to change venue, ECF No. 4, motion to raise
jurisdictional and constitutional issues, ECF No. 15, motion to dismiss second
cause of action, ECF No. 17, and motion to continue, ECF No. 29. Also before the

ORDER DENYING ALL PENDING MOTIONS ~ 1

1 Court is the Plaintiff Bruce Kriegman's motion to strike jury demand, ECF No. 8.
2 The Court has reviewed the motions, the supplements, objections, memoranda,
3 responses, all other relevant filings, and is fully informed.

4 **BACKGROUND**

5 This action is one of the adversary proceedings that began in the bankruptcy
6 of LLS America, LLC ("LLS"). According to the complaint, LLS operated as a
7 Ponzi scheme by receiving money from "lenders" that it would then provide as
8 small loans. ECF No. 1-4 at 3-5. However, LLS is alleged to have been insolvent
9 and using money received from later lenders to pay earlier lenders. ECF No. 1-4 at
10 6. The Cilwas are alleged to have lent money to LLS and received payments from
11 LLS. ECF No. 1-4 at 7-8. Mr. Kriegman, in his capacity as court appointed
12 trustee, brought this action seeking to avoid certain transfers of money made to the
13 Cilwas by LLS and to return that money to the bankruptcy estate. ECF No. 1-4 at
14 14-15.

15 The Cilwas moved to withdraw the reference to this case in light of the
16 Supreme Court's decision in *Stern v. Marshal*, 131 S. Ct. 2594 (2011). The Court
17 granted that motion in part, set a trial date in this action, and referred all pretrial
18 matters back to the bankruptcy court. ECF No. 2. After withdrawal, the Cilwas
19 filed a request for jury trial and a motion to change venue. ECF Nos. 3, 4. Mr.
20 Kriegman filed a motion to strike the jury demand. ECF No. 8. The Cilwas then

1 filed a motion to raise jurisdictional and constitutional issues, ECF No. 15, and a
2 motion to dismiss, ECF No. 17.

3 DISCUSSION

4 Three of the Cilwas' motions are directed at pretrial matters that have been
5 referred to the bankruptcy Court. Their motion to change venue has been denied
6 by the bankruptcy court.¹ This Court will not disturb that ruling.

7 The Cilwas' motion to raise jurisdictional and constitutional issues consists
8 of one page of moving papers and no supporting memorandum. In the motion, the
9 Cilwas "question whether [their] constitutional rights are being denied." ECF No.
10 15 at 1. The Cilwas reference jurisdiction, the right to a jury trial, and the right to a
11 fair trial. ECF No. 15 at 1. Pretrial motions should be directed to the bankruptcy
12 court pursuant to the Court's order on withdrawal of the reference. ECF No. 2.
13 Furthermore, the Cilwas failed to supply any argument or authority for the motion.
14 Accordingly, even if this Court were the appropriate forum for this motion, the
15 motion still would fail for lack of support. LR 7.1(b).

16 The Cilwas' motion to dismiss, ECF No. 17, seeks disposition of a claim.
17 Pursuant to the Court's order on withdrawal of reference, such a motion also
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20 ¹The order memorializing the bankruptcy court's oral ruling is ECF No. 37
in the adversary action 11-80161-PCW.

1 should be directed at the bankruptcy court in the first instance. Accordingly, the
2 motion will be denied.²

3 The Cilwas' fourth motion seeks a continuance of the trial date set before
4 this Court in order to facilitate discovery. As this Court's most recent order stated,
5 the bankruptcy court has authority to enter orders addressing discovery. ECF No.
6 28 at 3. The Court's order also stated that this Court will not be setting individual
7 trial dates at this time. ECF No. 28 at 3. Should the bankruptcy court, in its
8 management of pretrial matters, determine that the current trial date does not allow
9 sufficient time to accommodate the pretrial schedule, this Court is amenable to a
10 motion to continue the trial date. In light of the absence of such a finding by the
11 bankruptcy court, the Court will not grant the motion to continue.

12 Mr. Kriegman has moved to strike the notice of jury demand filed by the
13 Cilwas. This Court will address Mr. Kriegman's pretrial motion regarding the
14 Cilwas' right to a jury trial, which has a negligible impact on pretrial proceedings
15 in the Bankruptcy Court, but which does have a significant impact on the nature of
16 any trial in this Court. In addition, this Court has the power to grant the requested
17 remedy, which is to strike a pleading filed in this Court.

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20 ²The Court notes that the issue was heard in the bankruptcy court, and the
bankruptcy court denied the Cilwas' motion. ECF No. 82 in 11-80161-PCW.

1 Mr. Kriegman argues that the Cilwas do not have the right to a jury trial in
2 this case because the Cilwas filed a proof of claim in the bankruptcy action. For
3 this proposition, Mr. Kriegman relies on *Langenkamp v. Culp*, 498 U.S. 42 (1990),
4 which held that “by filing a claim against a bankruptcy estate [a] creditor triggers
5 the process of ‘allowance and disallowance of claims,’ thereby subjecting himself
6 to the bankruptcy court’s equitable power.” *Id.* at 44 (quoting *Granfinanciera,*
7 *S.A., v. Nordberg*, 492 U.S. 33, 58-89 (1989)). As a result, “there is no Seventh
8 Amendment right to a jury trial.” *Id.* at 45. The Cilwas filed a proof of claim in
9 the LLS bankruptcy action. *See* ECF No. 1081 in 09-bk-6194-PCW11.

10 Accordingly, argues Mr. Kriegman, the Cilwas enjoy no jury trial right on their
11 claims.

12 The Supreme Court recently clarified the *Langenkamp* rule in *Stern*. The
13 *Stern* court addressed whether certain counterclaims raised by the bankruptcy
14 estate against a creditor could be resolved by the bankruptcy court or whether those
15 claims could be finally adjudicated only in an Article III court. 131 S. Ct. at 2608-
16 16. The Court determined that the counterclaim raised by the bankruptcy estate in
17 *Stern* was the type of claim that had to be heard in an Article III court. *Id.* at 2615.

18 Relying in part on *Langenkamp*, the bankruptcy estate argued that the
19 bankruptcy court could resolve the estate’s counterclaim despite its being the type
20 of claim that should normally be heard in an Article III court because the counter-

1 defendant had filed a proof of claim in the bankruptcy action and thereby
2 submitted himself to the equitable jurisdiction of the bankruptcy court. *Id.* at 2615-
3 16. The Court rejected the estate's claim and distinguished *Langenkamp* on the
4 ground that the claims at issue in *Langenkamp* were resolved as part of the claim
5 allowance process. *See Stern*, 131 S. Ct. at 2616-17. Because the bankruptcy
6 court had authority to resolve the creditor's proof of claim, and such resolution
7 required the bankruptcy court to resolve the estate's claims against that creditor,
8 disposal of the proof of claim finally adjudicated the estate's claims. *See id.* In
9 contrast, the counterclaim at issue in *Stern* was sufficiently distinct from the issues
10 raised in the counter-defendant's proof of claim that resolution of the proof of
11 claim would not resolve the entirety of the counterclaim. *Id.* at 2617.
12 Accordingly, the bankruptcy court's exercise of its equitable jurisdiction would not
13 resolve the estate's counterclaim, and the counterclaim only could be resolved in
14 an Article III court. *Id.* at 2617-18.

15 The logic of the *Stern* court's ruling on jurisdiction applies with equal force
16 to the issue of a bankruptcy creditor's right to a jury trial on a counterclaim. A
17 creditor's filing of a proof of claim does not act as a waiver that deprives the
18 creditor of the right to a jury trial. *Granfinanciera*, 492 U.S. at 59 n.14. Instead,
19 the basis of the rule that a creditor's filing a proof of claim deprives the creditor of
20 the right to a jury trial is jurisdiction. It is the fact that the bankruptcy court has the

1 equitable authority to resolve a cause of action that results in a jury trial being
2 unavailable. *Langenkamp*, 498 U.S. at 44-45. Where final resolution of a cause of
3 action rests outside of the bankruptcy court's power, the right to a jury trial
4 remains. *See id.* at 45. In light of *Stern*, the right to a jury trial on a claim brought
5 by the estate against a creditor who has filed a proof of claim turns on whether it is
6 necessary to resolve the estate's claim as part of ruling on the creditor's proof of
7 claim. Where resolving the proof of claim means that the issues raised by the
8 estate's claim will be resolved, there is no right to a jury trial. Where the estate's
9 claim will not be resolved, the jury trial right persists.

10 This Court has withdrawn the reference to part of the adversarial action
11 between LLS and the Cilwas. ECF No. 2. This Court has not withdrawn reference
12 as to the claim allowance process. *See* ECF No. 2. Accordingly, any matters that
13 will be addressed on review of proposed findings of fact and conclusions of law
14 filed by the bankruptcy court, or that will be addressed at trial before this court,
15 will not be resolved as part of the claim allowance process. Therefore, the fact that
16 the Cilwas have filed a proof of claim in the bankruptcy court does not extinguish
17 their right to a jury trial with regard to those matters that are to be finally addressed
18 in this Court. Mr. Kriegman asserts no other basis for striking the Cilwas' jury
19 demand. Accordingly, Mr. Kriegman's motion will be denied.

20 / / /

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. All pending motions, **ECF Nos. 4, 8, 15, 17, 29** are **DENIED**.

3 **IT IS SO ORDERED.**

4 The District Court Executive is hereby directed to enter this Order and to
5 provide copies to counsel.

6 **DATED** this 25th day of October 2012.

7
8 *s/ Rosanna Malouf Peterson*
9 ROSANNA MALOUF PETERSON
Chief United States District Court Judge